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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Twentieth session

SUMMARY RECORD OF THE 21st MEETING

Held at the Palais des Nations, Geneva,
on Monday, 10 May 1999, at 10 a.m.

Chairperson: Mrs. BONOAN-DANDAN

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The meeting was called to order at 10.10 a.m.

GENERAL DISCUSSION: "THE RIGHT TO EDUCATION (ART. 14 OF THE COVENANT)" AND "THE RIGHT TO FOOD (ART. 11 OF THE COVENANT)": ADOPTION OF GENERAL COMMENTS ON THE PLAN OF ACTION FOR PRIMARY EDUCATION (ART. 14 OF THE COVENANT) AND THE RIGHT TO FOOD (ART. 11 OF THE COVENANT) (agenda item 9)

Draft general comment 11: Plan of action for primary education (two documents in English, without symbols, distributed in the meeting room)

1. The CHAIRPERSON said she welcomed the fact that the Committee had increasingly taken account of the opinions of other independent experts or experts affiliated with specialized agencies or institutions which dealt with areas covered by the various articles of the Covenant. She invited Mr. Pillay, who had been entrusted with drafting general comment 11, to comment on proposed amendments to the draft.

2. Mr. PILLAY said that although the text drawn up by Mr. Alston, a former member of the Committee, was not in itself a source of difficulty, some might consider it odd that the plan of action for article 14 focused solely on the right to primary education. As to comments made by members of the Committee, Mr. Hunt had made a number of proposals concerning paragraph 3, which was not essential and could be deleted. In paragraph 4, Mr. Hunt had indicated that the first sentence did not give a very good impression of the Committee and had therefore been amended in the revised version. Mr. Thapalia had proposed that more emphasis should be given to the nature of the plan of action, a suggestion that could easily be accommodated. It had also been noted that since the draft referred to paragraph 2 of the Convention on the Rights of the Child, mention might also be made of the Convention on the Elimination of All Forms of Discrimination against Women, which was another perfectly acceptable proposal. It was also important to indicate, particularly in paragraph 10 dealing with the progressive implementation of the right to education, that an obligation such as the elimination of discrimination was in fact directly enforceable by States parties. Regarding the last sentence in paragraph 4, the Special Rapporteur on Education, Ms. Tomasevski, had proposed replacing the phrase "major reductions in infant mortality rates" with the phrase "major reductions in child marriages". That change was also acceptable. In paragraph 7, it had been proposed to clarify the phrase "although a good deal of latitude is possible in individual cases" by adding that indirect costs could be regulated by legislation. An attempt had been made to incorporate the amendment into the text. Finally, the opinion of other Committee members would be welcome regarding Ms. Tomasevski's observation that the deadline of 2015 was too distant and might prompt States to delay adopting their plan of action. It might be preferable to delete the reference, given that it only concerned the Development Assistance Committee of the Organization for Economic Cooperation and Development (OECD).

3. Mr. GRISSA said that it was misguided to place too much emphasis on free education, because such an approach would condemn some countries to do without an education system altogether. In Africa, many countries lacked the resources to pay teachers. Yet they still had to be paid, which meant that parents had to foot the bill when it was impossible to increase taxes. Only the compulsory nature of primary education should therefore be stressed.

4. Ms. CASSAM (United Nations Educational, Scientific and Cultural Organization) said that the Committee's invitation to UNESCO to express its opinion concerning the draft general comment on the plan of action for primary education meant a great deal to the organization. UNESCO certainly did not claim to have a monopoly in the sphere of education. The right to education was far too important and complex to be left to the initiatives and resources of a single body. UNESCO was delighted that a growing number of its partners both inside and outside the United Nations system were turning their attention to education, evaluating its implications and examining the various problems that faced all the actors involved. Some remarks were necessary about UNESCO's views on the right to education. underlying its work was the principle that the effective implementation of the right to education was a prerequisite for democratization. Accordingly, education was not simply a right but also an indispensable tool for ensuring the right of every human being to exercise the sum of his or her intellectual and physical capabilities with a view to taking advantage of the choices offered by society and exercising other rights based on the underlying right to education. The nature of UNESCO's mandate, which had led to an interest in other areas including culture, had also led to the realization that, even when the right to education was enshrined in a State's Constitution or figured among a Government's priorities, decision makers might encounter cultural problems arising from a given society's notion of social justice, education for girls, the financing of education, or the role of the State, which might be tempted to delegate its educational responsibilities to the private sector. UNESCO had endeavoured to promote education in three key areas. First, extension of educational access by prioritizing the urgent needs of underprivileged countries or social groups. An appropriate integrated strategy adopted at the 1990 World Conference on Education for All had encouraged the grouping of formal and informal educational resources. Second, redoubling efforts to ensure equal education for women and girls. And, third, ensuring that greater educational opportunities went hand in hand with qualitative progress, the reference document in that regard being the report of the International Commission on Education for the XXI Century.

5. UNESCO fully endorsed the draft general comment on the plan of action and wished to ensure that the right to education was exercised not only in countries which lagged behind educationally, but also in those which were fully in control of the allocation of their economic and financial resources. UNESCO also approved of the general thrust of the text, and particularly paragraph 4, because it was true that certain conditions and political will needed to be present for education to become a reality. That was why the concept of a plan of action was especially welcome. The structural adjustment programmes imposed on Africa and especially Latin America since the 1960s, as well as the debt crises of the 1980s and the financial crises of the 1990s, had exacerbated the mass threat to the right to primary education. As to paragraph 4, there was a need for statistical studies and the collection of data to illustrate the alternatives to primary education, namely forced labour, sexual exploitation and drug abuse. It seemed that the denial of a child's right to education was tantamount to a denial of the right to a decent life. UNESCO was in a position to make a contribution to the Committee's work, especially on article 14. The first sentence of paragraph 4, which stated that the Committee had yet to receive a plan of action along the lines specified, was surprising given the special relationship which the Committee had forged with States parties. UNESCO's archives contained details of primary education programmes dating back 50 years, and for half a century the agency had been helping countries to devise programmes that were tailored to their resources and cultural priorities.

Through its educational activities, the many conferences which it had organized to help member States define their priorities, and the work of its regional offices, UNESCO was well placed to make a contribution to the Committee's work.

6. Mr. SADI said that the representative of UNESCO should provide further details about the approach of the International Monetary Fund (IMF) to the right to education.

7. Mr. PILLAY said that the comments by UNESCO had been incorporated into paragraph 4 of the revised version of the draft general comment.

8. Mr. CEAUSU said that he was concerned by the number of children of school age who lacked access to basic education, as indicated in paragraph 4 of the draft general comment. The representative of UNESCO should indicate whether its member States were continuing to delay the legal enactment of compulsory primary education.

9. Mr. WIMER ZAMBRANO asked the representative of UNESCO whether there was a link between compulsory and free education. In many countries, the State did not have the necessary financial resources to provide free primary education and parents lacked the money to pay for their children's education.

10. Mr. HUNT said that UNESCO should play a key role in the implementation of articles 13 and 14 of the Covenant. He welcomed the offer of cooperation which the representative of UNESCO had made.

11. Ms. CASSAM (United Nations Educational, Scientific and Cultural Organization), replying to Mr. Sadi's question, said that structural adjustment programmes, debt repayment and financial crises had prevented member States from implementing the right to education. Some countries were spending 10 times more on debt-servicing than on education. Countries which, in the 1970s and 1980s, had invested in compulsory primary education no longer had the means to do so, whence the low level of education, the increase in illiteracy, the exploitation of children and the break-up of families. The right to education was a hostage to the economic and financial priorities imposed by the Bretton Woods institutions. While the World Bank had realized that growth and development were nurtured by investment in education, IMF still did not share that view. When education was recognized as a right, it would be possible to define criteria which those institutions would be forced to take into account and which could be incorporated into future base indicators.

12. Mr. GRISSA said that the World Bank and IMF could not be blamed for the sorry state of education in developing countries. Even if they did not exist and developing countries' debt were to be cancelled, the problem of education would not simply disappear. It was a national problem, not an international one, in that developing countries did not have sufficient resources to cope with demographic growth.

13. Mr. ANTANOVICH said that, under its mandate, UNESCO should be the lead agency in a joint programme of action for primary education. Education had an international dimension

because international instruments imposed obligations on States parties, even those which were temporarily short of funds. Unfortunately, in most member States, education was heavily dependent on economic and financial priorities. For that reason, cooperation between UNESCO and the Bretton Woods institutions to protect and promote education and health care was very important.

14. Ms. THOMAS (International Labour Office) said that she shared the concerns expressed by the representative of UNESCO regarding the seriousness and extent of the human rights violations referred to in paragraph 4 of the draft general comment. She proposed that the phrase "basic education" in the second sentence of paragraph 4 should be replaced by the phrase "primary education", and the phrase "for example, child labour and sexual exploitation" should be added after the phrase "human rights violations". The last sentence should be expanded to state that high rates of school attendance, especially among girls, had a number of positive economic and social benefits. In paragraph 6, it would be preferable not to establish a link between compulsory education and the quality of education. The sentence should be split in two, after affirming that education should be compulsory, a new sentence should be inserted stating that the teaching offered should be of a high standard and adapted to circumstances. In paragraph 8, the term "community" should be replaced by "civil society". Like the representative of UNESCO, she believed that paragraph 9 should urge States parties to appeal for assistance from international organizations, especially the United Nations Development Programme (UNDP), in implementing their programme of action. Ways should be found to make education compulsory and free of any charge in the legislation of all countries, to put that principle into effect and promote the elaboration of programmes of action that mobilized national energies.

15. Mr. SADI asked the ILO representative to make more specific proposals, concerning, for example, ILO's approach to the elaboration of plans of action.

16. The CHAIRPERSON suggested that the Committee should adopt the draft general comment paragraph by paragraph.

Paragraph 1

17. Mr. CEAUSU proposed that the Committee should explain its rationale by inserting the following sentence at the end of the paragraph: "In spite of the obligations undertaken in accordance with article 14, a number of States parties have neither drafted nor implemented a plan of action for free and compulsory primary education."

18. Paragraph 1, as amended, was adopted.

Paragraph 2

19. Mr. PILLAY proposed the insertion of the words "and 14" after the phrase "in article 13" in the first line, and to insert the phrase "and the Convention on the Elimination of All Forms of Discrimination against Women" after "Convention on the Rights of the Child".

20. Mr. CEAUSU endorsed the suggestion of the representative of UNESCO that the words "and the establishment of a democratic society" should be added to the end of the penultimate sentence.

21. Paragraph 2, as amended, was adopted.

Paragraph 3

22. Mr. PILLAY suggested the deletion of paragraph 3.

23. Paragraph 3 was deleted.

Paragraph 4

24. Mr. PILLAY suggested that the paragraph should be redrafted thus: "In line with its clear and unequivocal obligation under article 14, every State party is under a duty to present to the Committee a plan of action drawn up along the lines specified in paragraph 8 below. This obligation needs to be scrupulously observed in view of the fact that 130 million children of school age are currently estimated to be without access to primary education, of whom about two thirds are girls. Structural adjustment programmes that began in the 1970s, the debt crises that followed in the 1980s and the financial crises of the late 1990s, as well as other factors, have greatly exacerbated the extent to which the right to primary education is being denied. The work of the Committee has shown that the lack of educational opportunities for children often reinforces their subjection to various other human rights violations. For instance, these children, who may live in abject poverty and not lead healthy lives, are particularly vulnerable to forced labour and other forms of exploitation. Moreover, there is a direct correlation between, for example, primary school enrolment levels of girls and major reductions in child marriages."

25. Mr. HUNT said that the first sentence echoed the wording which the Committee had agreed to add at the end of paragraph 1, as proposed by Mr. Ceausu. Overall, the text proposed by Mr. Pillay seemed too indulgent to States parties which had failed to honour their obligations under article 14 of the Covenant.

26. Mr. RIEDEL said that the number of children worldwide deprived of access to primary education as stated in the text - 130 million - was an overstatement of the case. Furthermore, the reference to debt crises should not serve as a ready-made excuse to those States which had not fulfilled their obligation under article 14 of the Covenant to provide compulsory education for all. The wording should therefore be modified.

27. The CHAIRPERSON said that she had sought the advice of the Committee's secretariat, which had informed her that the figure of 130 million children of school age referred solely to children in third world countries. The phrase "in developing countries" should therefore be added.

28. Mr. TEXIER said that the proposed text was not firm enough with regard to States which were not developing a plan of action for primary education as required under article 14 of the Covenant.

29 The CHAIRPERSON suggested that Mr Pillay should redraft the paragraph to take account of the comments that had been made The new wording would be considered at the following meeting

30 It was so decided

Paragraphs 5 and 6

31 Paragraphs 5 and 6 were adopted

Paragraph 7

32 Mr PILLAY explained that the phrase "although a good deal of latitude is possible in individual cases" had been deleted from the initial draft The phrase "subject to the Committee's examination on a case-by-case basis" had been inserted

33 Mr WIMER ZAMBRANO proposed the deletion of the final sentence

34 Paragraph 7, as amended, was adopted

Paragraph 8

35 Mr PILLAY proposed that, in the light of the comment by the representative of UNESCO, the phrase "participation of all sections of civil society" should be added to the beginning of the penultimate sentence

36 Paragraph 8, as amended, was adopted

Paragraph 9

37 Mr PILLAY proposed the insertion of the phrase "and article 23" in the third sentence after the phrase "of article 2", and the deletion of the final sentence

38 Paragraph 9, as amended, was adopted

Paragraph 10

39 Mr PILLAY said that a new phrase indicating that primary education was compulsory under article 14 of the Covenant had been added in the first sentence

40 The paragraph should end "In other words, the plan must specifically set out a series of targeted implementation dates for each stage of the progressive implementation of the plan This underscores both the importance and the relative inflexibility of the obligation in question Moreover, it needs to be stressed in this regard that the State party's other obligations, such as non-discrimination, are required to be implemented fully and immediately"

41 Paragraph 10, as amended, was adopted

Paragraph 11

42. Mr. PILLAY said that the following new text had been inserted after the first sentence: "Further, in appropriate cases, the Committee encourages States parties to seek the assistance of relevant international agencies, including UNDP, UNESCO, UNICEF and the World Bank, in relation to both the preparation of plans of action under article 14 and their subsequent implementation."

43. The list of agencies should also include IMF.

44. Mr. RIEDEL proposed the inclusion of ILO in the list.

45. Paragraph 11, as amended, was adopted.

46. The CHAIRPERSON said that the whole of General Comment 11, as amended, had been adopted except for paragraph 4.

Draft general comment 12: The right to adequate food (HR/CESCR/NONE/1999/6)

47. The CHAIRPERSON said that the Foodfirst Information and Action Network (FIAN) had made a significant contribution to the draft text and invited its representative to introduce the draft general comment.

48. Mr. WINDFUHR (FIAN-For the Right to Feed Oneself), outlining the background to the draft general comment, said that at the World Food Summit in 1996 Heads of State and Government had adopted a Plan of Action, objective 7.4 of which was "to clarify the content of the right to adequate food and the fundamental right of everyone to be free from hunger ... and to give particular attention to implementation and full and progressive realization of this right as a means of achieving food security for all". In order to meet that objective, the United Nations High Commissioner for Human Rights and the Food and Agriculture Organization of the United Nations (FAO) had organized meetings of experts which had drafted recommendations on the duties of States and intergovernmental organizations. Likewise, non-governmental organizations (NGOs) had implemented a code of conduct on the right to adequate food which had been circulated to members of the Committee. All those recommendations had been taken into account in formulating draft general comment No. 12.

49. The right to adequate food was by and large recognized in international instruments including the Covenant. It could not be dissociated from other human rights and the principle underlying the Covenant, namely the inherent dignity of the human being. Its realization was also an integral component of social justice and necessitated the adoption of relevant economic, environmental and social policies at national and international level to eliminate poverty and realize human rights for all.

50. As with all human rights, the right to adequate food imposed three kinds of obligation on States parties, namely observance, protection and implementation. To that end, States parties should respect ancestral land rights and ensure that individuals and legal persons, including

transnational companies subject to their jurisdiction, did not deprive individuals of access to adequate food. States should also protect individuals' freedom to feed themselves and make food and assistance available to vulnerable groups and disaster victims.

51. In order to implement the right to adequate food, States parties should take measures with respect to all aspects of the food system, namely food production, distribution and consumption. On the production side, land registers needed to be established and kept up to date, ancestral lands had to be respected and protected, and forced expulsions prevented. With regard to distribution, local food producers required guaranteed market access for their products, and the system of local stockpiling and distribution needed to be promoted and improved. As to consumption, States parties should respect and encourage traditional food patterns, enact and implement food hygiene legislation, and protect consumers against dietary misinformation and commercial fraud.

52. As to the immediate measures which all countries should take, irrespective of their level of development, the most important had to do with ensuring that everyone was protected against hunger. To that end an appeal should be made for international cooperation, where necessary. Furthermore, States parties should at all times refrain from imposing embargoes on foodstuffs or similar measures calculated to endanger other countries' access to food supplies. Food supplies should never be used as an instrument of political or economic pressure.

53. On the monitoring side, States parties should establish and operate mechanisms to track progress towards the realization of the universal right to adequate food. They should also identify factors and difficulties impeding the exercise of their obligations and facilitate the adoption of corrective legislative and administrative measures. The various elements that comprised the right to adequate food should be made subject to the jurisdiction of the domestic courts. States should therefore establish and implement effective and accessible judicial and quasi-judicial remedies including recourse to national institutions for the protection of human rights, and ensure that persons or groups claiming that their right to adequate food had been violated enjoyed access to such remedies.

54. The adoption of the draft general comment by the Committee would be a decisive step towards the realization of the right to adequate food.

55. Mr. TEXIER said that the sheer number of comments and recommendations which had been received indicated the importance of the right to adequate food. All the recommendations of the experts had been taken into account, which had led to a substantial reworking of paragraphs 9, 10, 11 and 25 of the original text.

56. Mr. MOORE (Food and Agriculture Organization of the United Nations) said that the Committee's consideration of a draft general comment on the right to adequate food was most timely. He noted with satisfaction that the technical advice offered by FAO had been taken into account at the drafting stage. However, two comments needed to be made. First, given that no two countries were alike, it would perhaps have been wiser to adopt the approach taken at the second meeting of experts under the auspices of FAO, namely to specify the duty of each State to establish a regulatory framework for the realization of the right to adequate food instead of becoming involved in policy details, considering that some policies were not always applicable

Second, more emphasis should have been placed on sustainability and development. A legislative framework should include principles that were relevant to human rights, for example monitoring, responsibility, transparency and participation in civil society.

57. Following the World Food Summit, FAO had been entrusted with difficult and ambitious tasks. The accomplishment of those objectives necessitated the elaboration of monitoring mechanisms and guidelines on State reporting. FAO therefore wished to study ways in which it could cooperate with the Committee in those areas.

58. The CHAIRPERSON said that the Committee looked forward to working with FAO and stood ready to assist the organization in its work.

The meeting rose at 1.05 p.m.